UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, U.S. Department of Justice Antitrust Division 1401 H Street, N.W. Suite 4000 Washington, D.C. 20530, *Plaintiff,* v. L'OREAL USA, INC., 575 Fifth Avenue New York, New York 10017, L'OREAL S.A., 14, rue Royale 75381 PARIS France, and CARSON, INC., 64 Ross Road Savannah, Georgia 31404, *Defendants.*	Civil Action No. ________ Judge ________________ Filed: __/__/00

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against Defendants, and alleges as follows:

1. The United States seeks to enjoin permanently the proposed acquisition by L'Oreal

USA, Inc. (formerly Cosmair, Inc.) ("L'Oreal") of Carson, Inc. ("Carson"). Unless enjoined, L'Oreal's proposed acquisition of Carson will substantially lessen competition in the sale of adult women's hair relaxer kits through retail channels in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. Carson and L'Oreal respectively are the nation's largest and third largest suppliers of adult women's hair relaxer kits sold primarily to African-American women through retail channels in the United States. The direct competition between Carson and L'Oreal in the development, production, and sale of adult women's hair relaxer kits has benefitted wholesalers, retailers and consumers with lower prices and better quality for hair relaxer kits. The proposed acquisition will eliminate this substantial head-to-head rivalry between Carson and L'Oreal.

3. This transaction will result in L'Oreal's controlling three of the top five selling brands and approximately 50 percent of adult women's hair relaxer kits sold through retail channels in the United States. Consequently, the elimination of Carson as an independent significant competitor substantially increases the likelihood that L'Oreal will raise prices of adult women's hair relaxer kits post-merger, harming consumers.

I.
JURISDICTION AND VENUE

4. This action is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

5. L'Oreal and Carson develop, manufacture and sell adult women's hair relaxer kits

in the flow of interstate commerce. L'Oreal's and Carson's activities in developing, manufacturing, marketing, advertising and selling adult women's hair relaxer kits also substantially affect interstate commerce. This Court has jurisdiction over the subject matter of this action and the L'Oreal and Carson pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a) and 1345, and the parties have consented to this Court's exercise of jurisdiction over them.

6. L'Oreal and Carson transact business and are found within the District of Columbia. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391, and the parties have consented to venue in this judicial district.

II.
DEFENDANTS

7. L'Oreal S.A., based in Paris, France, is the world's largest cosmetics and hair care company. Operating in more than 150 countries and employing more than 42,000 people, L'Oreal S.A. and its subsidiaries manufacture and market such well known brands as *L'Oreal®, Lancome®, Maybelline®, Laboratories Garnier®, Redken 5th Ave NYC®, Ralph Lauren Fragrances®, Giorgio Armani Parfums®, Biotherm®* and *Helena Rubinstein®*. In 1999, L'Oreal S.A. reported more than $10 billion in worldwide annual sales and $11 billion in total assets.

8. L'Oreal USA, Inc. ("L'Oreal") is a Delaware corporation headquartered in New York, New York. L'Oreal is a wholly owned subsidiary of L'Oreal S.A. Soft Sheen Products,

Inc. ("Soft Sheen"), based in Chicago, Illinois, is, in turn, a wholly owned subsidiary of L'Oreal. L'Oreal acquired Soft Sheen in 1998. Soft Sheen makes and sells ethnic hair care products, which are hair products formulated for, and marketed to, primarily African-American consumers. These ethnic hair care products include hair relaxers (both retail kits and professional relaxers), hair dressings, shampoos, and conditioners. Soft Sheen's brands include *Optimum Care*®, the nation's top-selling brand of adult women's hair relaxer kits. It also sells retail adult women's hair relaxer kits under the *Alternatives*® and *Frizz Free*® brands.

9. Carson is a Delaware corporation headquartered in Savannah, Georgia. Founded in 1901, Carson is a global leader in products specifically formulated to address the physiological characteristics of hair of consumers of African descent. It makes and sells a complete line of ethnic hair care products, including hair relaxers, shampoos, conditioners, hair oils, hair colors, and shaving cremes. It is the leading manufacturer of adult women's hair relaxer kits, which are sold through retail channels under the brands *Dark & Lovely*®, *Gentle Treatment*®, and *Ultra Sheen*®. Carson reported sales for 1999 of approximately $169 million.

III.
THE PROPOSED TRANSACTION

10. L'Oreal, through its wholly owned subsidiary Crayon Acquisition Corp., seeks to acquire, through a cash tender offer and subsequent merger, 100 percent of the outstanding shares of common stock of Carson. On or about February 25, 2000, L'Oreal entered into an agreement and plan of merger with Carson to purchase, for $5.20 per share, the common stock of Carson

("Purchase Agreement"). The value of the cash tender offer is approximately $79 million.

IV.
TRADE AND COMMERCE

A. Adult Women's Hair Relaxer Kits Comprise a Relevant Product Market

11. A hair relaxer is an alkaline chemical used primarily by African-American women to straighten their naturally curly hair prior to styling.

12. Unless an African-American woman relaxes, *i.e.*, "straightens," her hair, any hair style she adopts (aside from a natural look) will not last very long as the hair has a tendency to return to its natural curly state. Applying a relaxer will remove the hair's natural curl, make the hair easier to style, and prolong the life of any styling treatment. By relaxing her hair, an African-American woman has more styling options and her hair becomes more manageable. Between 65 and 80 percent of adult African-American women routinely relax their hair, spending well in excess of $200 million annually on hair relaxers and associated products.

13. An adult women's hair relaxer kit is a unique product having specific characteristics unmatched by any other product. Hair relaxer kits are specifically marketed to African-American women for home use. To that end, each kit typically contains everything needed to relax hair, including: (i) a complete set of instructions; (ii) gloves; (iii) two bottles of chemicals (the activator and relaxer base) that, when mixed, form the chemical that relaxes the hair (invariably the active chemical in relaxer kits is "no-lye" calcium hydroxide); (iv) a bottle of a neutralizing shampoo to deactivate the relaxer; (v) conditioners to repair split ends and make the

hair appear thicker or fuller; and in some kits, (vi) a gel to protect against scalp injury.

14. There are no good substitutes for adult women's hair relaxer kits. The unique characteristics of adult women's hair relaxer kits distinguish them from products such as hot combs or professional hair relaxers sold in bulk to beauticians. An African-American woman can get her hair relaxed in a salon, but this service is significantly more expensive than a hair relaxer kit. Because of the unique qualities and characteristics of adult women's hair relaxer kits, a small but significant increase in the price of hair relaxer kits would not cause a sufficient number of purchasers to switch to other products so as to make such a price increase unprofitable.

15. The development, production and sale of adult women's hair relaxer kits through retail outlets is a line of commerce or relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market Is the United States

16. Both L'Oreal's and Carson's adult women's hair relaxer kits are sold and compete directly in the United States. L'Oreal manufactures adult women's hair relaxer kits for sale throughout the United States in facilities located in Florence, Kentucky. Carson manufactures adult women's hair relaxer kits for sale throughout the United States in facilities located in Chicago, Illinois and Savannah, Georgia.

17. There are virtually no imports of retail adult women's hair relaxer kits into the United States. A small but significant price increase of adult women's hair relaxer kits would not cause a sufficient number of purchasers to switch to hair relaxer kits manufactured outside the United States to make the price increase unprofitable. Thus, the United States constitutes a

section of the country or relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

18. Carson and L'Oreal are respectively the largest and third largest suppliers of adult women's hair relaxer kits in the United States, and together own three of the top five selling brands of adult women's hair relaxer kits. L'Oreal and Carson compete directly against each other for retail sales, and to have retailers purchase and promote their relaxer kits for retail sale. For example, L'Oreal and Carson compete on price, improving promotional terms, and improving the quality of their relaxer kits. This direct competition between L'Oreal and Carson benefits consumers through lower prices, more frequent and better promotions, and improved relaxer kits. If L'Oreal's acquisition of Carson is permitted, the substantial competition between them will be eliminated.

19. The proposed acquisition will substantially lessen competition in the sale of adult women's hair relaxer kits through retail channels in the United States. This market currently is highly concentrated under a standard measure of market concentration employed by economists, called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Appendix A. In this highly concentrated market, with an HHI of approximately 2,100, L'Oreal has a share of about 17 percent and Carson has a share of about 33.5 percent of total dollar sales of adult women's relaxer kits through retail channels.

20. L'Oreal's acquisition of Carson would increase significantly the already highly concentrated adult women's hair relaxer kit market. After acquiring Carson, L'Oreal would

dominate the market with a 50.5 percent share, making it nearly twice the size of its next largest competitor. Following the acquisition, the HHI would increase by over 1,100 points from approximately 2,100 to over 3,200, well in excess of levels that raise significant antitrust concerns.

21. L'Oreal's *Optimum Care®*, *Alternatives®* and *Frizz Free®* brands and Carson's *Dark & Lovely®*, *Gentle Treatment®*, and *Ultra Sheen®* brands of adult women's hair relaxer kits are significant competitive constraints on each firm's prices for its brands. If L'Oreal is permitted to acquire Carson, L'Oreal would have the power to profitably increase prices unilaterally for one or more of its brands of adult women's hair relaxer kits sold through retail channels in the United States, to the detriment of consumers.

D. Entry Is Unlikely to Deter the Exercise of Market Power

22. Entry into the sale of adult women's hair relaxer kits through retail channels in the United States is difficult, time consuming and expensive. Barriers to entering this market include: (i) the substantial time and expense required to build a brand reputation to overcome existing consumer preferences; (ii) the substantial sunk costs for promotional and advertising activity to secure the distribution and placement of a new entrant's kit in retail outlets; (iii) the inability of a new entrant to recoup quickly its substantial and largely sunk investment in promoting its brand; and (iv) the difficulty of securing shelf-space in retail outlets.

23. Most hair relaxer kits introduced in recent years have been unable to gain significant sales within several years after entering. This is due in part to the degree of consumer loyalty and brand recognition for long-established, well-regarded brands such as Carson's *Dark &*

Lovely®, *Gentle Treatment*® and *Ultra Sheen*® and L'Oreal's *Optimum Care*®. To succeed, an entrant must gain consumer confidence and trust, as hair relaxers contain powerful chemicals that may pose significant health risks, such as burning one's scalp and hair. Developing a reputation for quality, reliability, and performance of one's hair relaxer kit generally takes many years.

24. Because of the years of effort it would take a new entrant to establish a reputation and gain consumer acceptance for its brand of hair relaxer kit, any attempted new entry would not be timely, likely or sufficient to deter the likely exercise of market power in the retail sales of adult women's hair relaxer kits by the combined firm in the reasonably foreseeable future.

V.
VIOLATIONS ALLEGED

25. The transaction will likely have the following anticompetitive effects, among others:

a. Competition generally in the development, production and sale of adult women's hair relaxer kits to wholesalers, retailers and consumers in the United States would be substantially lessened;

b. Actual and potential competition between L'Oreal and Carson in the development, production and sale of adult women's hair relaxer kits to wholesalers, retailers and consumers in the United States would be eliminated; and

c. Prices for adult women's hair relaxer kits sold to wholesalers, retailers and consumers in the United States would likely increase.

26. Unless enjoined, the proposed acquisition will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

VI.
REQUESTED RELIEF

27. Plaintiff requests:

a. That the proposed acquisition of Carson by L'Oreal and the common ownership of the Defendants' brands of adult women's hair relaxer kits be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. That Defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out the Purchase Agreement or any other agreement, understanding or plan, the effect of which would be to combine the businesses or assets of the Defendants;

c. That Plaintiff recover its costs of this action; and

d. That Plaintiff be granted such other and further relief as the case requires and this Court may deem just and proper.

Dated: 31 July 2000
Washington, D.C.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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APPENDIX A

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. One calculates the HHI by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with market shares of 30, 30, 20, and 20 percent, the HHI is 2,600 (30 squared + 30 squared + 20 squared + 20 squared = 2,600). The HHI takes into account the number and size distribution of the firms in the market. The HHI approaches zero when a market consists of many firms of relatively equal size. The index increases as the number of firms in the market decreases and may also increase as the disparity in size between the leading firms and the remaining firms increases. It reaches 10,000 when a single firm controls a market. Thus, a market of two firms with shares of 60 and 40 percent would have an HHI of 5,200 (60 squared + 40 squared = 3,600 + 1,600 = 5,200).

The U.S. Department of Justice and the Federal Trade Commission's 1992 Horizontal Merger Guidelines consider markets in which the HHI is between 1,000 and 1,800 as moderately concentrated and markets in which the HHI exceeds 1,800 points as highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Horizontal Merger Guidelines. Merger Guidelines § 1.51(c); *FTC* v. *PPG Indus., Inc.*, 798 F.2d 1500, 1503 (D.C. Cir. 1986); *United States* v. *Rockford Mem'l Corp.*, 717 F. Supp. 1251, 1279 (N.D. Ill. 1989), *aff'd*, 898 F.2d 1278 (7th Cir.), *cert. denied*, 498 U.S. 921 (1990).